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In the Supreme Court of the United States

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SUPREME COURT, U.S.

No. 414.

OCTOBER TERM, 1951.

SAMUEL MANDEL,
Administrator of the Estate of
ROBERT WILLIE DILLEHAY, JR., Deceased,
Petitioner,

vs.

UNITED STATES OF AMERICA.

PETITION OF SEAFARER'S INTERNATIONAL UNION (GREAT LAKES DIVISION) AS AMICUS CURIAE.

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To the Honorable the Justices of the Supreme Court of the United States:

The filing of this amicus curiae brief is provided for by Paragraph 9 of Rule 27 of this Court.

The Seafarer's International Union on the Great Lakes by their Attorney, S. Eldridge Sampliner, prays your Honorable Court for leave to file a Brief in support of a petition for a rehearing in the above entitled matter.

The Seafarer's International Union on the Great Lakes has a keen interest in the instant case because of its concern for the safety of seamen in general by increasing the safety standards and operations of seagoing vessels and further seeing that the laws which have always protected the seamen remain in full force and effect with proper interpretation being given to them.

The United States Court of Appeals of the Third Circuit held that the Administrator of the Estate of the civilian crew member, who was killed by serving as an officer of a tug which was owned and operated by the United States, which tug was struck by a mine in an Italian Port in 1944, could not sue the United States Government under the Public Vessels Act or the Suits in Admiralty Act to recover damages because of careless navigation of the tug, but was required to accept as sole compensation an award under the Federal Employees Compensation Act.

The Supreme Court of the United States on May 26, 1952, rendered a decision in behalf of the United States and against the Petitioner in the above-entitled matter, thus affirming the decision of the United States Court of Appeals for the Third Circuit.

QUESTION PRESENTED.

Whether the United States Court of Appeals for the Third Circuit and the United States Supreme Court correctly found that the Federal Employees Compensation Act was the exclusive remedy available to a civilian seaman killed on board a United States Public Vessel.

STATUTES AND REGULATIONS INVOLVED.

Federal Employees Compensation Act Sec. 1 *et seq.*, as amended, 5 U. S. C. A. Sec. 751 *et seq.*; Public Vessels Act, Sec. 1 *et seq.*, 46 U. S. C. A. Sec. 781 *et seq.*; Suits in Admiralty Act, 46 U. S. C. A., Sec. 741, *et seq.*

STATEMENT.

The pertinent facts may be summarized as follows:

The District Court entered judgment in favor of the libelant and against the United States because of the latter's refusal to produce a given document or record. The United States then appealed the case to the Court of Appeals for the Third Circuit, and while the main issue involved in the District Court was whether the Secretary of the Army was correct in refusing to release information which he regarded as important to keep secret, the Court of Appeals ruled on the broader question of whether the United States is liable to a suit at all.

ARGUMENT.

The first reason given by the Court of Appeals for reversing the District Court's decision is that the Workmen's Compensation Acts of the various states have been held to be the exclusive remedy available unless the Act is by its terms optional.

1. This is not a fair analogy. The purpose of these acts is to shift the burden of accidental injuries from the workmen to the industry, and to treat the cost of personal injuries incidental to employment as part of the cost of the business "and with a view that the expense of industrial accidents be ultimately paid by the consumers of the products of the industry and thus provide protection for both employer and employee." *Schneider, Workmen's Compensation Law*, Sec. 3 (1941). Therefore, the State Legislation is aimed at protecting both the employer and the employee whereas the Federal Legislation involved in the Federal Employees Compensation Act would be more analogous to a liberal grant by the United States Govern-

ment, and any construction of said Statute in favor of the recipient of said grant would not affect any third party involved. Thereby an interpretation of State Workmen's Compensation Acts, that would allow the employee to have an additional remedy other than that provided by the Act would be unfair to the employer and it would not be in harmony with the initial intention for the protection of both employer and employee.

Also many of these State Workmen's Compensation Acts expressly provide that the remedy provided by the Act is exclusive whereas in the Federal Employees Compensation Act there is no mention of that legislation being the exclusive remedy to seamen.

2. Allowing a civilian seaman to maintain an action under the Public Vessels Act and under the Suits in Admiralty Act would not discriminate against members of the Armed Forces any more than to bring to light the fact that members of the Armed Forces in many instances are subject to much different rules and regulations than civilians. In the case of *Feres*, 340 U. S. 135 decided by this Court in December 1950, this Court recognized that even soldiers may be subject to different remedies. The Honorable Justice Jackson, delivering the opinion of the Court, rationalized the decision in the *Brooks vs. United States*, 337 U. S. 49 case by stating that Brooks' relationship while on leave was not analogous to that of a soldier while performing duties under orders, thus leaving the inference that a soldier, depending on the circumstances under which he was injured, may bring suit under the Federal Tort Claims Act. Therefore, even a soldier in some instances has different remedies available to him.

3. The Court's fear, that a judicial review of the question of negligence in the type of suit in question would not

be in the public interest, might well be correct, but this issue should not be involved in the Court's determination of whether or not Congress intended that the Federal Employees Compensation Act be an exclusive remedy. This fear should be eliminated by proper legislation by Congress, and not by reading into a Statute the evils of a natural interpretation of said Statute. There is ample legislation on the books to prevent the disclosure of any information that might jeopardize the safety of this country without using this reasoning to restrict the proper function of the Public Vessels Act.

4. The Federal Employees Compensation Act, C 458, Sec. 1, 39 Stat. 742 provides that the United States shall pay compensation as hereinafter specified for the disability or death of an employee resulting from a personal injury sustained while in the performance of his duties.

This Act was the expression of a slowly developed purpose on the part of the United States Government to give compensation to its employees who otherwise would be without remedy when injured by fault of the Government. It is essentially an act of justice and grace on the part of the United States Government. *Dahn vs. Davis*, 258 U. S. 421. Therefore the intent of Congress is one of generosity rather than restriction on remedies for injured employees.

The remedy given to an employee of the United States under the Federal Employees Compensation Act is not exclusive and he may at his election maintain a personal injury action. *Payne vs. Cohlneyer* (CCA Ill. 1921), 275 F. 803.

The Public Vessels Act should be liberally construed so as to authorize recovery and damage for death resulting from collision caused by United States vessel. *New England Maritime Co. vs. United States*, 55 Fed. 2d 674.

Congressional adoption of broad statutory language authorizing suits against the United States for damages caused by a Public Vessel of the United States is not to be thwarted by any unduly restricted interpretation. *Canadian Aviator, Ltd. vs. United States*, 324 U. S. 215.

The Public Vehicles Act permits assertion of liability in Admiralty against United States, not only where vessel itself is the offending thing that has physically caused damage, but also where the crew of public vessel has been negligent. *Roah Hook Brick Co. vs. Erie RR. Co.*, 64 F. Supp. 288.

The above cases seem to bear out the intent of Congress in granting these new rights under the Public Vessels Act. The very recent case of *Johnson vs. U. S.*, 186 Fed. 2d 120 held that a civilian seaman on a Public Vessel of the United States was entitled to recover under the Public Vessels Act for injuries resulting from negligence of the operator of the ship, notwithstanding that he was entitled to compensation under the Federal Employees Compensation Act.

We are impressed with the liberal construction accorded the Public Vessels Act in *Canadian Aviator, Ltd. vs. United States*, 324 U. S. 215 where the Supreme Court held that the right accorded an injured party by the Statute to recover damages caused by a Public Vessel of the United States should not in frustration of the liberal intent of Congress be narrowly construed to restrict the recovery to damages caused by the physical instrumentality of the vessel but should also embrace damages caused by the negligence of its operators. The Federal Employees Compensation Act was passed in 1916 before the Statutes which now permit suits against the United States for Maritime Torts and for Torts in general. It was devoid of these provisions usually found in compensation

statutes that the benefits conferred upon the employee are exclusive of any other recovery against the employer.

Even under the Long Shoremen's & Harbor Workers Compensation Act, the Court has recognized that it is not an exclusive remedy. *Raderu vs. Jorka Corp.*, 26 F. Supp. 304.

> "Prior to the Longshoremen's Compensation Act, a longshoreman had a possible right of action against the vessel on which he was injured, against his immediate employer or against anyone also claimed to be responsible for injuring him, and the change in the law was not intended to reduce his rights but to enlarge them."

Thus in conclusion may we humbly state that this Honorable Court, not being able to find any possible reasoning that would restrict a seaman's suit under the Public Vessels Act itself, or any of a long line of decisions under the Act, came forth with another Statute enacted in 1916; known as the Federal Employees Compensation Act, and reasoned thusly: (1) the Federal Employees Compensation Act is an exclusive remedy, (2) a seaman is entitled to the benefits of this Act, (3) therefore, the Federal Employees Compensation Act is a seaman's exclusive remedy when injured on a Public Vessel. This line of reasoning is erroneous in that even Congress in 1949 refused to make the Federal Employees Compensation Act an exclusive remedy for seamen. Therefore the conclusions from this false premise are incorrect.

The Court's explanations of why they are now depriving a seaman of the rights he has had for many years cannot end by the above-enumerated reasoning, for they then had to explain another piece of legislation designated as the Public Vessels Act, and this they completely side stepped by reverting back to their false interpretation of

the Federal Employees Compensation Act. Their reasoning forms somewhat of a circle with an act of injustice as an end result.

If the Court is to deprive seamen of benefits they have received for many years when Congress would not do so in 1949, then the Court is not acting in its judicial capacity but rather as a legislative body, and the framers of our Constitution never intended this to be.

WHEREFORE it is respectfully urged that this Court grant a rehearing in the above-entitled matter and that the Seafarer's International Union's Attorneys be granted the privilege of filing this Brief as amicus curiae.

Respectfully submitted,

S. ELDRIDGE SAMPLINER,

Attorney for Seafarer's International Union.